IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5486 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE FERTILIZERS AND CHEMCIALS LTD.

Versus

PRESIDING OFFICER

Appearance:

MR. GANDHI for MR MIHIR H JOSHI for Petitioner

MR. S.T. MEHTA, AGP for Respondent No. 1

MRS. D.T. SHAH & MR GIRISH PATEL for Respondent No. 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 10/03/99

ORAL JUDGEMENT

Heard learned counsel for the parties. The petitioner challenges the award of the Labour Court, Surat, dated 28.5.1997 directing the petitioner to reinstate the respondent with full backwages and cost. The facts leading to this petition are that the petitioner in pursuance of the application of the respondent interviewed him and appointed him vide letter dated 29.4.1988 on the terms and conditions contained in

the letter, the relevant conditions of which are reproduced hereinbelow.

1. You will be on training period for one year from the date of your joining, during this training period you will be paid the stipend amount of Rs. 800/-

2. At the end of the training period, if your performance is not found upto the standard, the training period will be extended by the Company at the sole discretion of the Company and if you complete your training period successfully, your appointment will be regularised in the Company and you will be put on probation period for one year by offering suitable grade.

3. You will have to enter into an agreement and will have to execute the Bond to serve the Company for 4 years. In case of breach of the agreement/Bond the Company has all the right to file a suit against you for the recovery of the Bond amount as well as the expenses incurred for imparting training to you.

2. By order dated 1.5.1989 services of the respondent were terminated. The termination order stated that "your training period will be over at the close of work today and we are not in a position to extend the training programme further." You are requested to collect your dues, if any, from our accounts department on any work day between 9.00 a.m. and 4.00 p.m.

3. The respondent workman challenged the termination inter alia on the ground that it was an invalid retrenchment. A dispute was referred to the Labour Court, Surat. The Labour Court found retrenchment not falling under Section 2(oo)(bb) and held to be invalid as it does not comply with the provisions of Section 25F.

4. The petitioner urged that the services of the respondent were liable to be terminated at the discretion of the petitioner at the close of the training period of one year and invoking the stipulation to that effect if the employer has terminated the service of the respondent as trainee, such termination is required to be covered by the provisions of Section 2(oo)(bb) of the Industrial Disputes Act and cannot be considered to be retrenchment. He also urged that no reasons are required to be stated in the order of termination once it is in exercise of the discretion of the employer under clause (2) of the

appointment order referred to above and that being the issue the termination order must be deemed to be for not satisfactory completion of training. This plea of the learned counsel for the petitioner is countered by the learned counsel for the respondent by referring to the plea taken by the petitioner in its written statement in the labour court and the statement of its witness before the labour court and urged that the termination of services were not for completing the training not satisfactory but for other reason and therefore exercise of discretion was not available to the petitioner in the present case.

5. There is force in the contention of the learned counsel for the respondent. It is obvious that there is no specific stipulation giving unfettered right to the employer to terminate services of the trainee on completion of one year training period. Two stipulations have been made in the letter of appointment; one in case performance is not found upto the standard at the end of the training period, the training period will be extended by the company at the discretion of the company, second on the other hand if the training period is successfully completed the appointment is to be regularised in company by putting the appointee on probation period of one year by offering suitable grade. Thus, the option was not free to be exercised one way or other on completion of one year period but to follow definite course in either case. The discretion was only to be exercised in case of performance of trainee was not found upto the standard during the training period. There was no stipulation as to discretion to offer or not to offer job on completion of training period, successfully or otherwise. In the statement to the claim filed by the respondent workman a specific plea was taken by the petitioner that on completion of training period services of respondent were terminated because there was no work available for him. There is not a slightest suggestion that the training period was not extended because his services were found unsatisfactory during the training period. The statement of Deputy Manager of the petitioner is to the effect that services have been terminated on completion of one year training. There was no other reason of misconduct or otherwise to terminate services of the respondent. Thus obviously the contigency for exercise of discretion in terms of appointment order to extend the period of training did not arise at all. On the other hand the case squarely fell within the latter part of clause (2) i.e. on successful completion of one year's training he is to be placed on regular services on probation. This alone is sufficient to sustain the order of the Labour

Court because continuing with the petitioner on regular appointment on completion of training was a necessary consequence of the terms of appointment and not the termination of services at the discretion of employer at the end of training period.

6. It may be noticed that the termination order being contrary to the terms of the appointment itself and the respondent having acquired the right to be regularly appointed and further the question whether the respondent workman can be treated as workman within the definition of Section 2(5) does not remain of much relevance. The petitioner has urged as the respondent was appointed merely as a trainee-apprentice, no employer-employee relationship existed between the petitioner and the respondent so as to confer upon him any right to be appointed. This contention also, in my opinion, is not well founded on merit. Undue importance cannot be attached to the use of word trainee. The tenor of appointment order is clearly to the effect that after regular selection a person is appointed for a period of one year is grooming for the purpose of future working and on successful completion of such training period his appointment is to be treated as regular and once that stage is reached his appointment from the beginning is to be treated as appointed with the company as an employee and not merely as trainee. The appointment order envisaged execution of bond for a period of four years on the breach of which it gives right to the company to recover the amount of bond as well as expenses incurred towards imparting the training. Thus training is not for offering employment in future but is part of employment for grooming the employee suitably for the job for which he is recruited. The order is not of the nature where a person is offered only an opportunity to train himself for a period and thereafter it is for the employer's discretion to offer him a job on availability of a vacancy. Here is a case appointment from the beginning is for vacant posts. Order merely defines how the initial period is to be utilised in the establishment. Apart from that the definition `workman' inserted with effect from 24.8.1984 includes apprentice within the meaning of the term workman. The precedents relied on by the learned counsel for the petitioner explaining that an apprentice who undergoes training is not a workman between whom and the employer existed any relationship of master and employer under Apprentice Act are of little assistance while considering the case arising under Industrial Disputes Act concerning retrenchment. The petition therefore fails and is dismissed. Notice is discharged. No order as to costs.

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